IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL No.606 of 2001
(Old No. 1341 of 1989)

1. Singara Singh S/o Dur Bachan Singh, R/o Bhuksaura, P.S. Rudrapur, Nainital now U.S. Nagar
2. Sabir Husain R/o Katora, P.S. Rudrapur, Nainital

.....Appellants

Versus

State

... Opposite Party

Dated: June 8, 2007

Sri D.S. Mehta, learned amicus curiae for the appellants
Sri Prabhakar Joshi, learned brief holder for the State

HON. DHARAM VEER, J.

This appeal, preferred u/s 449 of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C*) is directed against the order dated 07.06.1989 passed by Sessions Judge, Nainital in Session Trial No. 94 of 1987, State Vs. Harbhajan Singh.

2. By order dated 07.06.1989, the Sessions Judge, Nainital as directed the appellants to deposit the amount due on their respective bonds by 19.6.1989 and in case of failure, it was directed that he same would be released through coercive process. The order-dated 07.06.1989 was passed by Sessions Judge for the reason that the appellants were failed to trace out and produce the accused Harbhajan Singh in the court despite being given enough time. It is also stated in the order dated 07.6.1989 that the appellants have not taken the required interest in this behalf and they have also failed to assign any reason as to why the penalty due on their respective bonds should not be realized. Against the said order dated 7.6.1989, the appellants Singara Singh and Sabir Husain have filed the present appeal before this Court.

3. I have heard Sri D.S. Mehta, learned amicus curiae for the appellants and Sri Prabhakar Joshi, learned brief holder for the State.

4. Learned amicus curiae for the appellants has submitted that he procedure prescribed u/s 446 Cr.P.C. has not been followed by learned Sessions Judge at the time of passing of the order dated 7.6.1989. Section 446 of Cr.P.C. is relevant to mention here which reads as under:-

446. Procedure when bond has been forfeited (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited.

or where in respect of any other bond under this Code, it is proved to the satisfaction for the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited.

The Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Explanation – A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend t six months.]

(3) The Court may [after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which

constitutes a brach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

5. learned amicus curiae for the appellants also submitted that a separate case was not registered as a miscellaneous case u/s 446 Cr.P.C. as has been provided under the Rules and in an arbitrary manner, the learned Sessions Judge has passed the order dated 7.6.1989 without giving any opportunity to produce the Harbhajan Singh in the court and even no show cause notice was issued to the respondents by the court and the bail bonds were not forfeited. For the said reasons, he submitted that the order dated 7.6.1989 passed by learned Sessions Judge, Nainital is liable to be set aside.

6. From a perusal of the above quoted section as well as the order dated 7.6.1989 passed by learned Sessions Judge, Nainital, it reveals that the procedure prescribed under Section 446 Cr.P.C., quoted above, has not been complied with.

7. In view of the above, the order dated 7.6.1989 passed by the Sessions Judge, Nainital is set aside against the appellants Singara Singh and Sabir Husasin only. The appeal is allowed accordingly.

(Dharam Veer, J.)

Rajeev Dang